

REMARKS/ARGUMENTS

In the Restriction/Election of Species Requirement mailed August 10, 2009, the Examiner delineated the following invention as being patentably distinct.

Group I: Claims 1-8, drawn to compounds of trithiocarbonate derivatives.

Group II: Claims 9-15, drawn to a method for making the compounds of trithiocarbonate derivatives.

Group III: Claims 16-26, drawn to a method for using the compounds of trithiocarbonate derivatives.

Accordingly, Applicants elect, with traverse, Group II (Claims 9-15) drawn to a method of making the compounds of trithiocarbonate derivatives.

The Examiner further required that Applicants elect a single species. Accordingly, Applicants elect, also with traverse, sodium 2,2' [carbonothioylbis(thio)]bispropanoic acid.

The claims of Groups I-III are integrally linked as compounds, method of making and method of use thereof.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinctness. Compounds, method of making and the use thereof should be examined together. It is a technical relationship that involves the same feature, and it is this technical relationship that defines the contribution which each of the groups, taken as a whole, makes over the prior art.

Final product and method of making and use are interdependent and should be examined on the merits especially wherein the sole disclosed utility of the product is that recited in the specification. Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the MPEP at § 803 states as follows:

“If the search and examination of the entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct independent inventions.”

Applicants submit that a search of all of the claims would not constitute a serious burden on the Office. In fact the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that restriction should now be required when the International Preliminary Examination Report did not, the restriction is believed to be improper. 37 C.F.R. § 1.475(b) provides in relevant part that a “national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to (3) a product, process especially adapted for the manufacture of said product, and the use thereof.

Applicants request that if the invention of Group II is found allowable, withdrawn Groups I and III, which include the limitation of the allowable claims, be rejoined.

Applicants further request that should the elected species be found allowable the Examiner expand the search to include the non-elected species.

Divisional applications filed thereafter claiming the non-elected species should not be subject to double-patenting ground of rejection, 35 U.S.C. § 121, In re Joyce (Comr. Pats. 1957) 115 USPQ 412

Applicants submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Paul J. Killos", is written over a horizontal line.

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